IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1241 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRIBHOVANDAS MOTIRAM PATEL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1241 of 2004

MR PR NANAVATI for Petitioner No. 1

MS DHARMISHTA RAVAL for Respondent No. 1,4

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 04/05/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Ms. Dharmishta Raval, learned senior standing counsel for the Central Government, waives service of notice of rule on behalf of respondent Nos.1 and 4.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 1/6.10.2003 (Annexure A to the petition) rejecting the petitioner's claim for duty draw back rate. The petitioner had submitted an application dated 16.8.2000 for fixation of brand rate of duty drawback on export of the goods namely "Dyed and/or printed fabrics made from 100% Polyester Filament Texturised Yarn" (with or without Embroidary and/or with or without Metalised Yarn) exportd under DEPB-cum-Drawback scheme.

The said application was rejected by the impugned order only the basis of the circular No.39/2001-Cus dated 6.7.2001 and subsequent guidelines issued by the Ministry on 29.8.2001.

3. At the hearing of this petition, Mr. P.R. Nanavati, learned counsel for the petitioner, states that the question whether the effect of the above-numbered circular is only prospective or also retrospective came up before a Division Bench of the Bombay High Court in Writ Petition No.125 of 2003 and the by judgment dated 15.3.2004 the Division Bench has allowed the petition holding that circular No.39/2001-Cus dated 6.7.2001 is effective only prospectively and not retrospectively.

Nothing has been pointed out to us to show why we should not agree with the aforesaid view of the Bombay High Court.

4. In view of the aforesaid finding that the above circular dated 6.7.2001 is only prospective in effect, we quash the impugned order dated 1/6.10.2003 (Annexure A to the petition) and direct the respondent No.3 to consider the petitioner's application dated 16.8.2000 in accordance with law without relying upon the aforesaid circular dated 6.7.2001 and the subsequent guidelines dated 29.8.2001.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)